Transcription ICANN Toronto Meeting

Board Session with Commercial Stakeholders Group

Tuesday 16 October 2012 at 11:15 local time

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Tony Holmes: Good morning. If I could ask everybody to take their seats, please, for this session.

Okay. So I'm going to kick things off pretty quickly because we really do appreciate the time that we spend with the board, and on that basis, we should look to move it along.

One of the improvements that have happened, I think, for the board is the fact that now we come to you. I remember days back in the past when, on constituency day, we used to see the board en masse running from room to room to meet with the various groups, so this seems to work much better, and we very much appreciate our interaction with you.

We have three key issues that we want to cover with the board, and then there are some issues where issues were reflected back to us for some input as well.

Those three issues we're going to work through is: Protection at the second level; the impact of the new gTLDs on ICANN and its structure; and the WHOIS review team recommendations.

So I would ask Steve Metalitz from the IPC to introduce himself and kick off the first item, and Marilyn and I will introduce ourselves as we pick up the other topics.

So Steve.

Steve Metalitz: Thank you very much, Tony.

 I'm Steve Metalitz with the intellect property constituency.

One thing that we have been working on intensively since we've been here in Toronto and even prior to that, and working in -- closely with our colleagues from the other constituencies, is the issue of improving or enhancing the protections -- the rights protection mechanisms at the second level in the new gTLD program.

I think we -- obviously a lot of work was done on this in the past, but we now know a lot more than we knew then about the landscape that we are facing, and that includes a much higher number of applications than anticipated, it includes a rather concentrated level of applications with many applicants putting in scores or hundreds of applications, and it includes other -- we now know the characteristics of the -- of the applicant pool that we, of course, could only speculate about in the past.

And we also know, and we are hearing certainly from our constituents in the IPC, and I'm sure the BC is hearing the same -- we are hearing very high levels of concern about whether the safeguards and the protections are adequate to achieve the objectives of this program, which include promoting consumer trust in the domain name system.

With this number of new generic top-level domains, this high a risk of consumer confusion due to abusive registration, this great a potential risk to the users around the world, we've come to the conclusion that -- and we are urging ICANN to improve and enhance the rights protection mechanisms that are in place.

We have developed a list of these, and of course we will be sending this to the board, and particularly to the new gTLD committee of the board.

I'll run through them quite briefly, and then I know there are also members of the constituencies here who can add more information about them.

And we can hand them to the board members in hard copy, but again, we'll be circulating these.

Some of these are things that really are, in effect, minor adjustments of the existing mechanisms.

So for example, the first is extending the sunrise launch period from 30 to 60 days, for the standardized process. That's basically a numerical change.

Second, extending the trademark clearinghouse and claims notice for an indefinite period rather than for the very limited time period that exists now. Ensure that that process is easy to use, secure and stability.

The third is to complete the URS -- the Uniform Rapid Suspension -- process as a low-cost alternative and improve its usefulness. I think we're all kind of concerned that here we are roughly six months from the projected date of first delegation of new gTLDs and the URS, I think to say it exists on paper might be a bit of an overstatement. It's -- we don't -- we're nowhere near that, and we're concerned that this actually be a robust mechanism. It's -- I think everyone agrees that this was an essential building block of the structure of the new gTLDs. And we also feel, in terms of the financing of this, that if necessary, ICANN should underwrite some of the costs for an initial period.

Our fourth point is really the most contentious among our groups, and we've reached a high-level agreement on it and look forward to further discussion, and that is to call for a -- implementing a mechanism for trademark owners to prevent

the second-level registration of their marks, meaning exact matches of their marks, and character strings that have been previously determined to have been abusively registered or used, such as, for example, through UDRP or court actions, and to have that mechanism work across all registries, upon payment of a reasonable fee, with appropriate safeguards for registrants with a legitimate right or interest.

And we recognize that those are high-level articulations and will need to be -- will need be worked out.

Our fifth point is to -- that all contact information for registrants in the new gTLDs, their WHOIS data should be validated.

Sixth, that all registrars active in the new gTLD registrations must adhere to the amended registrar accreditation agreement for all gTLD registrations that they sponsor. And those, of course, can be implemented through the RAA negotiation process.

Seventh, enforce the compliance of all registry commitments for standard applications, so that ICANN is able to enforce all the representations that applicants make in their applications, in their response to public comments, in their response to early warning, and so forth.

And finally, expanding the trademark claims service, which now only covers exact matches of a trademark, to cover at least -- and I think there's strong sentiment for going beyond this -- at least those character strings that were previously found to have been abusively registered or used.

So that's the list. This is one that the business constituency and the intellectual property constituency have come together on. And I know Tony has a comment on this from the perspective of the ISP constituency, but I wanted to run through those quickly.

You will be getting those in hard copy and electronically, and we thank you for your consideration of those.

Tony Holmes::   Thank you, Steve.

Just before I ask if any member of the board has any comment, just to position the ISP constituency on this, we certainly agree that the rights protection mechanisms within the guidebook need to be strengthened and we're 100 percent in accord with our colleagues in the commercial stakeholders group on that. And we also endorse the intent and critical importance of preventing fraudulent registrations, reducing costs of defensive measures. Absolutely critical that we make it clear. We fully support that.

We're a little bit more neutral, currently, on the specific mechanisms, but certainly the expertise is around to address that, and we're fully in support of those measures.

So I think what we're actually saying here is that we're all in a position where we think that these measures need to be strengthened. What Steve has set out are a number of steps that could help to achieve that, certainly need to be considered with respect to that, and I'd like to ask if any member of the board would wish to respond in any way. Thank you.

Steve Crocker: Tony and Steve, thank you very much. It's, in a way, quite refreshing to have a very specific set of "asks," even as extensive and in some cases a bit challenging, but it's very, very helpful to have this level of specificity.

There's been an enormous amount of focus on trying to examine this area. Some combination of Sally, Fadi, Chris, and Cherine -- or perhaps some subset, maybe -- are probably the appropriate set of people to respond.

Who's going to stick his or her hand up first?

Yeah. Cherine and then Chris.

Cherine Chalaby: Well, first of all, Steve and Tony, thank you very much. I think the comments you made about promoting consumer trust by adequate protection is imperative and we all agree and thank you for all this input.

I know that staff and Kurt have been working with Marilyn on some of these points, so they are being taken into consideration.

Not all of them have risen up to the new gTLD committee because we don't -- but the -- the URS one is an important one.

We recognize two things there. One, it's late. We haven't got a provider yet.

And the other issue was that the text as originally compiled in module 5 of the applicant guidebook, some people are saying it will lead to a new expensive transaction, more than 300 or $500, so we need to look into that.

But you're right, we're six months away, we should have something in place and we are still wondering how much is it going to cost, and that. So that is a very important point.

I don't know what to tell you, I mean, other than these are very, very solid points and we should take those very seriously, and we will talk to staff and see where we stand on each one of these points.

Chris Disspain: Thanks. I just have a process question, I think, and forgive me if I should know this, but how far is this stuff being socialized within the rest of the GNSO and the contracted parties side, et cetera?

Steve Metalitz: We are -- thank you for that question, Chris. We are planning -- we are reaching out to other parts of the GNSO. I will say I think we finalized this list yesterday, so -- or last night, so we haven't gotten as far as we'd like on that. But we are doing that and we hope we will have support from other parts of the GNSO.

Chris Disspain: So just a comment. So you finalized it last night. Can we say it's final or have you -- or do you have --

Steve Metalitz: We finalized this list last night, which we present as our -- I think it's the consensus between those two -- those two constituencies.

Marilyn Cade: Thank you. I just -- I have been -- Marilyn Cade. I have been working on this quite extensively, as some of you know, with my colleagues and with others, but also with a broader group of industry, and so not only, Chris, are we socializing it within the existing participants and constituencies, there's been a very initial request to talk to the NPOC further that I've made, that we'll have to do here, but in addition to that, there are other industry groups that are here and that have been interacting with us and I'd like to maybe see if -- I know a couple of them wanted to make a short comment.

Would it be helpful if we could hear from a couple of those folks who are newcomers but actually have been working for quite a long time?

Steve Crocker: Yes, I think so.

Also, surely we want to have this posted on the ICANN correspondence page and --

>> (Speaker is off microphone.)

Steve Crocker: Yeah. Thank you. Thank you, Steve.

Steve Crocker: Gonzalo?

Gonzalo Navarro: Thank you, Steve. And thank you, Steve. I have just one question.

You said that you -- this is a formal list and you are going to complete the information or your position in a more extensive document for us to be -- analyze it?

Steve Metalitz: Well, we'd certainly be glad to answer any questions about it. Some of this -- the things on this list are very simple and straightforward, and some of them are definitely more complicated.

And if you look at the fourth point, for example, we've had a lot of discussion about this and we think more -- yet more discussion is needed.

But we do think that all of these issues can be dealt with as implementation matters within the framework of the existing new gTLD program.

I hope that that's helpful in answering the question.

Steve Crocker: Fadi, do you want to say anything about the state of examination of the mechanisms that are involved here?

Fadi Chehade: The only thing I can report is that when I was presented with a solution right before Toronto, I have decided to -- to just step back a little bit and not move forward with it until I've had a chance to think through it with all of you.

So we are being very thoughtful and careful before we sign up for anything. At a minimum, we should be very engaged with all of you before we sign up for anything. That sounds like 101. But we are going to be doing that.

I've had, in the last two days, at least four to five hours of meetings on this, and I'm setting up a bunch of more meetings in the next two, three days on this.

We have white boards in my office. If you go now, you'll see how much about this is there. And it's not just us. This morning, we spent two hours with the registries listening to them. We'd love to listen to all of you. So we're going to engage in deep solution development together. This is not going to be something that will happen and will be sprung on anyone. That doesn't work. And so we will be listening.

On the cost issue, I just want to give you a heads-up. There are various numbers floating as to what this will cost, what it will cost trademark owners, what it will cost registries, and I wanted to just -- just relax about this a little bit, because before I get to cost, let's find a solution.

Once we find the solution, then we can decide what it should cost.

So it doesn't mean we're restarting from scratch, but I'm just, frankly, taking the time personally to re-examine everything about the solution and ensure that we have listened to all of you sufficiently. So that's happening as we speak.

Tony Holmes: Okay. Go ahead.

Ram Mohan: Thank you for this list. One question I had was on Point Number 5, "Validate contact information for registrants in WHOIS."

Wonder if you could expand a little bit what you mean by "validate" because there are, you know, varying levels of what "validation" really means.

You know, you could simply send an e-mail out and see whether an e-mail exists. You could simply, you know, call a number and see whether it rings. Or you could go all the way to the other end.

Where, in your minds, does this start and where does this end? I mean, what would be acceptable in your minds for validated registrant information?

Steve Metalitz: Well, this is Steve Metalitz. I'll just respond very briefly.

This is an example of something where we -- is stated at a high level of generality. Right now, no one is required to validate their data, any aspect of their data that they submit into WHOIS, and in the new gTLD environment, we feel that simply can't -- can't be done. We have to know -- people have to be able to know who is registering in these domain names.

How -- the specifics of it, you raise some very good points and I know they've been discussed in the RAA discussions as well, which may well be where this gets worked out.

But this is kind of the high-level point that we've stated.

Steve Crocker: If I -- if I might, the dialogue about what level of validation really is in the context of the implied question of, "What are you going to do with this information?" Obviously, you want this information to be accurate, so that when you need it, you can contact the person, and that seems to me the touchstone of the quality control aspect of this.

And then the details of what is sufficient, how well it's working, whether you have to evolve it over time, can you measure the degree of effectiveness versus the cost and so forth, are -- with a certain tongue-in-cheek -- near-implementation details.

But the overarching question is, is it accomplishing the effect that you need, and I think that if we can keep that kind of question visible and come back and revisit it over time, so that we know whether or not it's working, then we get out of this trap of arguing about what's the cost of doing this mechanism versus that mechanism, when really it is a shared goal of making the system effective and cost-effective.

I mean, effective for the enforcement aspect and cost-effective in terms of implementation.

Ellen?

Ellen Shankman: Ellen Shankman. Thank you very much and we very much appreciate your looking at all these issues.

The one thing that I had hoped to clarify in what I'm hearing is that some of these "asks" seem new or are coming to the table, and we've worked very hard to articulate the asks to make them happen, but these -- we deliberately are putting it at the high level, but these are issues that have been on the table right from the beginning. And so I think it's important that the reason that we keep coming back to this is because these don't go away because they're broadly desired by everybody, and how to implement them in a way that's both effective and cost-effective and works for everybody is -- is the great challenge. But they are important to address as targets.

Steve Crocker: Mike?

Mike Silber: Thanks, Steve. I'm very pleased to see some of these suggestions, and I think that to some extent, we haven't seen enough content for a simple cost-effective protection for rights holders at the second level, which means the program bringing innovation doesn't at the same time affect negatively existing rights holders. That's not the intention of the program, nor is it the intention, as I've heard a number of times, to allow people to build a business model based on defensive registrations.

That being said, there is a perception in some parts of the community, and it seems to have some factual basis of every time there is a compromise, rights holders then ask for an additional set of protections, further protections. So there's discussion. There's agreement. There's a position that's developed on some compromise basis at point A, and then the pushback comes and the request is moved to point B.

It either gets moved to point B or there is some degree of compromise at some middle ground and everybody's happy until the next request comes in. I can understand that. That's good negotiation.

But what I really want to understand: Is this the bottom line? Is this the final request? If this set of requests is able to be worked through with the other parts of the organization, because they're impacted as well and they need to be consulted and involved, and if all the items on this list go through in this or a slightly modified form, will there will be another list that comes out in Beijing or Durban or anywhere else or is this the bottom line?

Steve Crocker: Marilyn.

Marilyn Cade: I'm going to respond to that and then recognize a couple of people from business because I think it is really important for the board and the staff to be able to hear from the businesses.

And do notice I'm not calling them rights holders, and I'm not calling them trademark holders. They're businesses who are serving customers.

One of the other requests, Mike -- and we do want to thank the board for this -- the business constituency asked for, and this was then supported, a change in the objection period. The objection period originally was due to close on January the 13th. In most regions of the world, people celebrate some holiday in December. And so there was certainly a problem with the timing for other reasons. We raised those reasons in a detailed memo for you.

The board has now agreed to a 60-day extension. It is out for public comment. We'll do our job in helping to explain why that extension is important. Many of the businesses were not satisfied with 60 days, but we are pushing all of ourselves to accept that as a reasonable compromise and to work closely with ICANN on fulfilling the request for information. And I'm thrilled that Sally and Fadi and other members of the staff are really stepping up on that part of it.

So I think actually we are really trying to come to you in good faith and to bring others with us. And some of the folks who are with us broadly, and I mean ICANN, they are with ICANN, maybe we can just hear from some of them quickly.

Paula Guibalt: Thank you. My name is Paula Guibalt, and I'm from The Coca-Cola Company. And what I really thought needs to be brought into focus this morning is that it is not just about brand owners and rights holders. It is about consumer confusion. We somehow -- this has been skewed to be about protecting our rights, not about the consumers who are going to be led astray when this many new gTLDs open up.

Slow down? Sorry.

You know, we can talk about a clearinghouse. We can talk about defensive registrations. But if I use the XXX, for example, Coca-Cola, I understand someone joked yesterday that we really only had one mark. How hard could this be? In fact, we have got 500 brands and. There are, in fact, a few countries where the local brand outsells Coca-Cola. So I can't really even concede that if I cover Coca-Cola, I have covered the bulk of our business.

For XXX, we filed in the sunrise period for less than 200 of those 500 brands. We spent $60,000. If I look at the 1400 potential new TLDs, I eliminate brand-oriented ones, closed ones, and assume some of them won't be the host of infringing or confusing activity and just figure 300 of those, I'm looking at $18 million to do defensive registrations.

You're probably thinking Coca-Cola can afford $18 million. But I can tell you my marketing people would rather spend that money selling product, reaching consumers rather than trying to put the genie back into a bottle they didn't open.

I understand the notice period -- or defensive registration, the clearinghouse will get notice of potential infringers. It is my experience -- and I admit it's skewed by being a brand owner -- not so many of those are innocent infringers. That just gives me a heads-up that I get to spend more money going after them.

I would urge that we need stronger rights protection mechanisms, that right now as it is set up, it is not providing enough for businesses such as Coke to protect consumers who see brands and they view it as a matter of trust. And that trust is going to be breached and be completely out of our control.

Tony Holmes: Thank you. I'm a little concerned that we have very limited time with the board as a stakeholder group, and we have two other issues at least to get through. So could I ask the comments to be very brief.

Sasha Tarin: My name is Sasha Tarin (phonetic). I'm from the National Basketball Association. And I kind of want to echo what Paula said, in that for us, we don't view our fans as consumers really. We view them as kind of the lifeblood of our sport.

And we have made it a focus to do our best to protect our fans when it comes to abusive registrations on the Internet for domain names that incorporate our team names or NBA mark.

And to give you an example of how this issue has really kind of been escalated more recently, we at the NBA have noticed a huge increase in the number of Web sites that are specifically targeting our fans trying to exploit them. And whether that means selling them counterfeit goods or using our team names to have them sign up for surveys promising free give-aways of jerseys and products that just don't exist, we hear it directly from the fans, their frustrations. They question why do our teams promise a free jersey and I never received it.

And I will be honest, it is very difficult for us to respond to our fans and say, "That really isn't us. That's someone somewhere around the world that we don't know who it is."

And I appreciate that there's rights protection mechanisms in place today. You know, we at the NBA believe additional rights protection mechanisms are necessary, especially in light of the increase in the number of TLDs that are going to be launching. And we would appreciate that the board take that under serious consideration. Thank you.

Tony Holmes: Thanks. I appreciate one of our colleagues stepped out of the queue. Can you please keep your comments very short.

Kathryn Park: Yes, I will. I'm Kathryn Barrett Park. I'm from GE. I'm also the chair of the IPO Internet committee, which is a member of the IPC. I'm here to talk about the impact on GE's consumers. We are a big financial services company, among other things. And our concern is already to face enormous challenges in protecting our consumers from phishing and fraud and other kinds of scams that are popping up all the time.

And so our interest here is that in a lot of new generic top-level domains which will have -- which will sound like they are going to be helpful to consumers, that there can be an opportunity for bad actors.

We really strongly support the fourth bullet that Steve Metalitz referenced earlier, which is some way to protect our brands in a do-not-sell or a blocking list which would give us some way then to target the rest of our enforcement budget to really protect our financial consumers. Thank you.

Tony Holmes: Could we make this the last comment, please? Thanks. Sorry.

Jerry Depardo: Hi, Jerry Depardo (phonetic) with Travelers Insurance. We are a global company, and we're here to work with the board and ICANN generally to affect the protections that we need at the second level but also to deal with the issues of generic names.

We echo Coca-Cola and GE's concerns and the budget issues and the cost issues involved in protecting our brand. Thank you.

Tony Holmes: Can you do it in 20 seconds?

Fred Felman: I will do IT in 20 seconds. Last Tuesday H.U.D. and the FBI brought down 900 cybersquatted sites that were targeting American consumers that were targeting their refinancing of homes.

This is a problem that strikes consumers. There were 73,000 documented cases of consumer fraud in that case where Americans actually lost money due to cybersquatting. We are not just talking about brands. We are talking about people. I would like to underscore what Coke said.

With respect to someone's remarks, I'm not sure whose they were, we spend a lot of time lining up our consensus. And so I think this represents a consensus opinion, and this really is our last shot at this. Thank you very much for the opportunity to speak. I'm Fred Felman from MarkMonitor.

Tony Holmes: I think it is rather unusual that we have had such a queue form so quickly in one of these sessions. So I'm going to move on.

Chris, did you want to come back?

Chris Disspain: So thank you. And thank you all very much for the comments. I have got a couple of -- just a couple of points.

So slowly, Marilyn, thanks but we really do need to get an answer to Mike's question. It is a very fair question, which is -- and it's kind of why I said, when you said "finalized," do you mean "final"? Because we need to know. That's the first point.

The second point is I'm very concerned that all of this information is coming and it's great to get it, but this is -- this has -- this sort of stuff has to come to us from -- that's why I asked you if it has been socialized. It has to come to us from the GNSO really in the sense that -- the other parties are affected by it, right?

So my concern is that there is a danger that we are going to get stuck in this big debate again where the contracted party side is going to come to us and say, No, we can't agree to this because of this. And you are not going to get what you want because it will end up being a battle.

So it's great that we are getting all the information, but we need it to come to us at least with an understanding of what other parties think.

Marilyn Cade: Chris, sorry, I will respond. Sorry. This is our final request, but I mentioned the objection. Okay, so you understood, that was a package to us.

But, secondly, we will socialize it. We are part of the GNSO. It cannot come to you from the policy council. It has to come to you from the GNSO. That means we will meet with the constituencies. They may not agree with us. We will meet with them.

Steve Metalitz: I think what's significant -- if I could just add. I agree with what Marilyn said. I think what you heard of a bit in the queue is the fact that major, major global companies who have not participated within ICANN directly up till now are coming here to try to tell you why it's important to deal with these issues.

Fadi Chehade: I'm new to this, so I will plead ignorance. Was this consensus developed like this and delivered to ICANN prior to this morning?

Steve Metalitz: No. We finalized this list last night.

Fadi Chehade: Okay. So I don't need to go ask my staff why I haven't seen the consensus before.

Steve Metalitz: I will say the point that was raised earlier by Ellen, a lot of these issues were on the table before.

Fadi Chehade: But this is the first time it is coming from you?

Steve Metalitz: Yes, this is new. What we are pledging to do now is to socialize it to try to get more on board with it and work with you on it.

Fadi Chehade: I'm very pleased. This is very helpful.

The second thing is, it's just -- it's mid October. I need to have that system up and running by January 1st. We have so many things to do. I'm very concerned that the consensus was just arrived at now, and it still needs to go to, as you just said -- you need to socialize it within your own community.

So it only means we have to work hard, and that's okay. But I'm just saying, I'm becoming conscious that we kind of need to, as my colleagues were saying, narrow this and get to a point where I know what I'm working with so that you can count on me to bring all of these things with my team to a solution.

But the time is running out. Really, new gTLDs will be out potentially, potentially as early as next April. And so we have quite a bit to do. We have systems to build, processes to institute, people to instrumentalize, all of that, and support it. There is just a ton of work to do.

So, thank you for doing this. This is very helpful. And we will -- we will immediately put it into the process. And thank you for it.

Tony Holmes: Thank you very much for that. We very much appreciate that. I think what we have a delivered is quite a strong message but also filtered in this brief period. When we have discussed it, we've actually made some progress as well. So thank you.

With that, I would like to move on to another issue that we wish to discuss with the board.

I will ask Marilyn to introduce herself and also speak about the impact of the new gTLDs.

Marilyn Cade: Tony, I would be happy to do that. But could we ask Steve, of the remaining topics, is that their priority? Because I would be happy for us to do their priority.

Steve Crocker: I think the short answer is yes in the sense that as between the issues that are your list versus our list, I'm much more interested in the ones on your list. And of the ones that are on your list, you just have three. We have disposed of one. So I'm down to a choice between the first and the last item. And I think the answer is yes.

Marilyn Cade: Thank you. I'm happy to talk about this topic quickly after saying, first of all, that my favorite topic is WHOIS and I intend to say that a lot this week, the issue of impact of new gTLDs on ICANN on the GNSO and on the community. So we all responded to the letter that Steve Crocker, the board chair, invited all of the communities who come to meet with you to give a response and most of us did.

Others are still thinking about -- I'm sorry? Okay. Sorry, I thought you wanted to interrupt me. Sorry.

Am I okay, Bertrand?

Most of the -- we would summarize the responses that were received as largely being -- calling for an evolutionary approach, not a revolutionary approach. And there were -- there are elements that are different across them. The ISPs -- sorry, the IPC and the registrars have not responded yet, I believe. The ALAC responded with a call for a much broader look at, I would say, significant changes in certain places but a broader, longer term.

But from the constituencies within the GNSO, there was largely a call for an evolutionary approach while making sure that the newcomers, the newcomers like the business folks and the new applicants, have a reasonable meeting of their needs during this period of time. And the registries, as you all know, have already responded.

I think we've talked a great deal about the co-existence of this need to examine the impact of the new gTLD program with the need to do a GNSO review and at this point would assume that those can exist in parallel.

Finally, I would say that the three constituencies' responses verbally and in discussion would be that we are not allergic eventually to major changes. Some of us may feel that there has to be a very strong understanding of who is coming and what their needs are before undertaking structural change.

And then, finally, I will say only that it was very impressive for all of us to see the original introduction of the CEO's ideas and concepts and that it's clear that many of those -- the implementation of many of those objectives and goals should also be taken into account in considering any restructuring or other changes.

Finally, the point that I would like to make is, we must do our job every day in the structure we're in in order to be successful. And introducing dramatic and sudden change in the middle of an already-stressed and overworked environment may mean we fail to meet anyone's needs. That would be the BC's comment.

Steve Crocker: Thank you, Marilyn. Let me just offer from a kind of general principle's point of view. The addition of a large number of new TLDs necessarily changes the equation. So the question of asking, So in what way does it change it and what is the impact is a necessary question.

That said, from a sort a process management point of view, now one can further ask: Do we need to know the answer ahead of time? Or if we're going to err on the side of doing it too early or should we err on the side of doing it too late in the sense, what are the downside risks?

And I think what you're suggesting -- I'm going to put a little bit of interpretation into it, but I think fairly, is that even if we decide that some substantial change might be necessary, let's get the evidence of that. Let's work within the current system, and let's not be hasty about that process.

And I empathize with that quite frankly. Just my own personal instincts of that. That's not to say we shouldn't keep that question very strongly in mind and deal with it as we go forward.

Other thoughts? Mikey, do you have anybody -- I see a note keep popping up, but I don't know if that's relevant to people -- okay.

Tony Holmes: I believe Bertrand wanted to speak as well.

Steve Crocker: Thank you.

Bertrand De La Chapelle: Two points. The first one was actually before merging or migrating to this new topic. I wanted to make a comment that came to mind after the different interventions on the mic.

I welcome very, very much the shift in language that is happening here because the issues that have been raised by Coca-Cola, GE and so on are not trademark protection issues per se. They are consumer protection issues.

That's a very important shift. I want to highlight it because solving consumer protection issues is not done exclusively through trademark protections. The component of it is trademark protection. But I think we have reached a point now in order to help Fadi make the distinction between what has to be implemented right now and what needs to move forward. I wonder whether we haven't reached the threshold whereby we should seriously discuss how to collaborate and use the ICANN community to handle better the treatment of abuse.

He has put an emphasis on compliance, which is a general issue. But the whole issue of rapid response when there is an abuse -- I mean, the example of NBA or others, spotting abuse, having ways to track this has nothing to do with trademark. And I fully agree with Coke. The solution cannot be extremely expensive and costly trademark defensive registrations. So we should probably separate the two.

Very quickly on the second point, as a note of information on this process on impact of new gTLDs, I want to thank both Marilyn and Tony for the responses of the BC and the ISPCP.

We intended to have a session fully on this question of impact of the new gTLDs on ICANN processes here in Toronto. That's what we announced in Prague and why we solicited input on one paper.

Due to schedule constraints, it was extremely difficult to put a full session in there, so the solution that has been adopted, as you know, is a breakfast for the chairs of the SOs, ACs and constituencies tomorrow, Wednesday, and the two topics that I want -- I will raise with them is, one, how to organize precisely the timing, the depth and the procedures for this discussion in the community in the perspective of Beijing and particularly the question of timing is very important as Marilyn has raised.

And the second question is how this discussion is or should be articulated with the planned reviews that are already on the agenda, i.e., the anticipated GNSO review which is a bylaw requirement and the ATRT 2, which is not per se a review of this but will have some dimensions.

Just as a note that these are the two points that we intend to discuss, and we'll be preparing a real session in Beijing.

Steve Crocker: Thank you. I'd like to offer a comment that's related to what Bertrand has said but follow up on some of the comments from the particular brand holders. Not all of the ills that we see in the -- on Web sites and throughout the net can be fixed with action at ICANN or even within -- and certainly not with registrar and registry contracts. There may well be some exacerbation of existing problems through the TLD, the currents and new TLDs, but there's an underlying status of active set of abuses that are underway now and probably the broader issue is, how can we improve the general environment, not just the environment that is triggered by new TLDs and is there a common cause that brings us together, ICANN, business constituency, and many other -- intellectual property community and so forth, working with others outside of the particular structure that ICANN is with law enforcement, with various other enforcement mechanisms. And in that context, the addition of new TLDs may be a piece of the discussion, but I suspect that there might be a great deal more interest and more impact and improvement if we find a way to get at the root problems of abuse and various mechanisms for dealing with that. And I -- again, I don't want to speak in an uncoordinated fashion about all of ICANN, but from my point of view, that discussion that embraces others and moves toward a cleaner market, a cleaner marketplace and either a reduction in incentives or an increase in the rapidity or strength of response to abuses, balanced of course with the issues of free speech and various other rights, complicated space, might be the stronger path to go.

Steve Metalitz: Thank you, Steve. I think your points are very well taken and that the solution clearly just could not possibly lie solely with ICANN on this much broader issue. But one resource that is an important part, again not the whole solution by any means of this is WHOIS. And that is a resource that ICANN is the steward of and has been the steward of, and issues about its stewardship and the direction it takes in the future are really the WHOIS review team recommendations which I think is the last topic that both the Board wanted to ask us about and we wanted to speak to the Board about. So maybe we can pass to Tony to kick off that discussion now before we --

Steve Crocker: Perfect segue.

Tony Holmes: Okay. Thank you very much for that. I must begin by saying that we were very buoyed by the remarks made during the opening ceremony by Fadi who really recognized this as a huge issue that needs to be moved forward and certainly currently it seems to be somewhat a blot on ICANN. And for those of us who operate in other forums, very often we'll be referred back to -- this is as close as I can get. I hope you hear me. Very much it's referred back to us that this organization, ICANN, this multistakeholder model, it can't address this issue. It's 10, 12 years and little is happening. We're now at the stage where we're looking at the issue of the WHOIS review team recommendations and I'm sure everybody is

aware that this is ongoing work in the GNSO on that score. A matrix has been put together which shows exactly, I think, what Fadi referred to, the difficulties here. That we have extreme views and not that many people in the middle. But we would argue that if you look at that matrix closely there are certain elements of that where that isn't really the case. There may be a line of extreme views on the one hand but the majority are actually looking to find a way forward to move those things forward.

Within the CSG we are going to provide a list of our response back on those issues from the three constituencies because the one thing we can't guarantee at the moment is what would be the outcome of the process in the GNSO, whether that list is ever agreed. But we do think it's important that we forward our views to you so we know -- you know where we stand on this. And we would very much urge the Board to act on this and provide a sure sign that something is actually moving here and we're steadily going down a path to resolve these very difficult issues. So that's our plea, that we actually look to make firm progress in as short a time as possible.

Steve Crocker: Thank you, Tony. As I've said in a couple of forums and I think probably important to say at this point, we have, of course, the WHOIS review team recommendations sitting on our desk, as it were. We're doing the due diligence phase, which is not as visible as I would like it to be but is an absolutely necessary part of asking for each of the recommendations, is it feasible to implement, how would it be implemented and so forth, so that if we choose to adopt that recommendation we're in the position of being able to actually deliver on that. And that's vital. We're seeking inputs from various other sources so that we have a clear view of all of these. You have, for example, the quite widely read SSAC review that asks some of the foundational questions. We're not yet ready to make decisions and on Thursday we will not be in a position of voting and saying we're going to do this or we're not going to do that. But we will pretty forthcoming about where we are and what we're going the do. But the foundational questions have attracted our attention because for exactly the reason that this has been a long-suffering, lingering issue and we're as fatigued and unhappy about the fact that it just sort of lingers there, want to move to a qualitatively better position and we think this is the time to have that serious discussion.

Personally I'm very interested to see the matrix, and the other aspect that you're suggesting is one that resonates very strongly, which is, if one can separate the issues and make progress on ones where there's no question that's the right thing to do, that's certainly better than just having a complete stop to everything. And so again, falling short of making a specific commitment or announcing a decision but certainly the mood of the Board and the direction of our thinking. So we are just as eager as everyone else is to come out with a positive, forward direction in this process and not just have this mill around for another cycle.

Steve Metalitz: Thank you. This is Steve Metalitz. I guess just two points here. One, of course as you know, as the Board well knows, this is a topic that is on the Board's desk but for a limited time period in the sense that the Affirmation of Commitments requires you to respond to the Final Report within six months, so I think a lot of people will be watching to see your response. And I think what -- one point that Tony made I'd like to reiterate is that ICANN -- let me put it a little more bluntly than Tony did,

but I think it's accurate that ICANN is widely known in the world of Internet governance as having failed to deal with this issue. This is a resource that is -- that was clearly given to ICANN for stewardship and under ICANN's watch it has deteriorated. So it really -- I think it's a very important signal that the Board will be sending when it finally acts on the WHOIS review team recommendations by the deadline, and I think -- I would certainly encourage the Board to give a strong endorsement of these -- of these recommendations, recognizing that some are going to take a lot longer than others to implement and there are going to be a lot of implementation issues in some cases. But I think the signal that the Board sends will be very important and will be very -- very carefully listened to throughout the Internet world. Thank you. And as well, I mean, on this consumer protection issue, which I think Bertrand has very appropriately brought back up to the surface, WHOIS is a consumer protection tool. And it's critical in that regard. It's critical in dealing with the abuse problems. It's not the whole solution by any, any means but it is an important part of the puzzle, I think.

Steve Crocker: Yeah. Thank you -- thank you very much. We're quite conscious of the clock. We have absolutely no intention of sort of unnecessary delay or being tardy about that. Just to emphasize for the benefit of everybody, that's a requirement to respond within six months. Not a requirement to have implemented all of that. That will take much longer. But I think we're in perfect sync, frankly, despite the sharpness of the message and I -- I don't take any umbrage from that. I think that the frustration about the WHOIS is felt throughout the entire system and definitely felt within the Board. And we want to be in a position where we make some serious forward progress and not just in the traditional vernacular kicking the can down the road and having it come back for some other set of people to deal with.

Susan Kawaguchi: Just a very quick comment. I'm Susan Kawaguchi with Facebook. I was on the WHOIS review team board -- or team. And just to remind you all, and I'm sure you know this --

>> Susan. Susan.

Susan Kawaguchi: I'm bad at talking into microphones. So it was a very diverse group that you picked to study this, and we went into a room and it took us 18 months of hard work. And although all of those recommendations, I -- you know, I would have tweaked a little bit from my point of view, from Facebook's point of view, but we came to a consensus on each and every one of those recommendations. We -- it was hard-fought but we agreed. We came to middle ground.

So I just want you to keep that in mind when you're reviewing and how implement -- if you're going to implement these or not that it was from every part of the community that made that decision. And you entrusted us with that, and now we're entrusting you to implement.

Steve Crocker: We're -- we're deeply conscious of that. And deeply appreciative, frankly, of the enormous hard work that you put in. It's challenging in our position to be able to get the nuances exactly right. The bias is very, very strongly in favor of accepting the recommendations with the knowledge of the work that went in, with the task that we entrusted to you. That said, there is a small gap between that and just accepting it pro forma and saying, you said it, therefore it must be so and we'll

implement it because we then are charged with the responsibility for carrying that through. And we have a substantial responsibility to make sure that we've got all those pieces in place before we go forward and that they're going to be as effective. It's a healthy process. And one that -- let me ask you and members of the review team to trust us to take as seriously as you've taken your responsibilities. But we do not at all take lightly the work that you've done. We don't view it as an arbitrary or casual input that we might look at some day. This is serious hard work. It sits very high on our agenda and it's getting substantial attention and -- and our common cause, as I've said, is that if we can take this opportunity to really make substantial progress on this so that we are not in the position of having comments like, this is a blot on our reputation, we've struggled with it for 12 years. I think we all very, very well understand that. So I thank you.

Susan Kawaguchi: Thank you. I appreciate that.

Tony Holmes: Thank you very much. And I believe we're out of time now. But I would like on behalf of the commercial stakeholder group to thank the Board very much for your time. We -- we very much appreciate every minute we spend with you. And the good thing is, I think we certainly walk out of this room with some very positive messages, which we do appreciate. Fadi.

Fadi Chehade: Yeah. Just maybe a closing comment from my side. I think the lady from Facebook -- I mean, if you've been like me through the process of building a home, you know that architects come up with the most beautiful plans but then when the contractor has to implement them, often they have to go back to the architect and say, I know you wanted that beam but, you know, it's impossible. We need to work through this together.

You have been selected as our architect. You've done a remarkable job. We're not going to switch from a home to a boat. We understand that this is the architecture you gave us. But allow us time, as the people who have to implement and live by this. And you heard me yesterday say on the ATRT, we're going to make this part of our DNA. This is not about checking boxes and responding. We view what you've done a huge assistance to us moving forward. That's my spirit about it and our staff's spirit. And the Board's spirit. So we're going to look at them, if we can -- and the precedent is in ATRT. The Board adopted all the ATRT recommendations, so we have absolutely nothing against that approach. We just need to be given the benefit of the doubt to look at it, and I'm doing this with my staff, recommendation by recommendation, can we live by this and we're advising the Board this way. So allow us the time to do that. Having said all of this frankly, I must say the wisdom of the SSAC report has occupied a big part of my thinking. It's remarkable that we have yet to answer why -- you know, why do we need this? We kind of define that we need a car but we haven't kind of decided where we're heading. So there is some thinking that needs to happen. That doesn't mean we freeze until we decide where we're heading. We also know we're not heading -- we're not fighting whether we're heading east or west. We kind of know we're heading east, but maybe there's some adjustment. So we'll start moving, we'll start moving as we should. And Steve's frustration is appreciated. He's not just frustrated for the sake of it. There's frustration. We need to get moving on this. This is, as I joked yesterday, this is not the Middle East issue. We have got --

good minds have to come together and advance this issue forward and let us focus on bigger things.

But in terms of priority, right now for me, it's first the trademark, then the RAA, then the WHOIS. Now, that doesn't mean I work sequentially. But in terms of what I'm going to put a lot of my time on in the next few days and few weeks, it's in that order simply because from an implementation standpoint I have to solve these and attend to them in that order. And in fact, this week I'm having lots of informal meetings with many of you to understand your requirements for the trademark issue. So I put -- I put the sheet that I got from you today in my pocket and I'll be seeking some of you. But I'm having -- between 6:00 a.m. -- or between midnight and 6:00 a.m. I'm having lots of informal meetings because we're here and let's -- let's listen to all of you. And I'll advance this as fast as I can.

Steve Crocker: And Fadi, let me say what may be going through various people's minds, the WHOIS and the RAA are maybe not so completely separable that one can do one without the other.

Fadi Chehade: Absolutely, and that's why I apologized for calling the WHOIS a bit of a cancer yesterday. Not the purpose of the WHOIS but the issue has become a cancer because it touches everything. I'm waiting for our cafeteria people to say we can't get espresso beans anymore because there is a WHOIS issue regarding espresso beans. Everything in the office, every agreement, every substantive discussion about ICANN's work involves solving the WHOIS issue. We can no longer just leave it there. It's actually spoiling everything for us. So we're on it. We'll address it. Medium -- short term, medium term and long term we have to get this -- get ahead of this issue. Committed to that.

Steve Crocker: I think that does bring us up to and past our allotted time here. On behalf of the Board, let me thank everybody here for frank and earnest discussion. I think a hallmark of these meetings is that we want to dive right into the substance of it, and this has certainly been 100% devoted to that.

[Applause]

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